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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 140 of 1990

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT

1. Whether Reporters of Local Papers may be allowed to see the judgements? - Yes.

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2. To be referred to the Reporter or not? - No.

[illegible]

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3. Whether Their Lordships wish to see the fair copy of the judgement? - No.

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4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.

5. Whether it is to be circulated to the Civil Judge?—No.

Kiranben A. Shah

Versus

M/s. Hyderabad Allwyn Ltd.

Appearance:

MR PS CHAMPANERI for Petitioner
Mr.K.J. Thakkar, Advocate, for MR KS NANAVATI for
the Respondent.

CORAM : THE CHIEF JUSTICE G.D.KAMAT

Date of decision: 29/08/96

ORAL JUDGEMENT

This Revision Application is by the original defendant and judgment debtor against the order dated 5th of February, 1990 made by the Civil Judge (Senior Division), Surendranagar, rejecting the objections raised to the execution of a decree.

Briefly put, the facts are that the respondent instituted a suit against the applicant for recovery of an amount of Rs.16,599.76, being the amount due in respect of the transaction. It is common ground that the applicant carried on proprietorship business, in the name and style of M/s. Nigam Sales Corporation. She obtained dealership from the respondent in respect of goods manufactured by them, viz., Refrigerator. The petitioner had issued two cheques for Rs.6,435.95 and Rs.10,163.81, together making a sum of Rs.16,599.76, towards the price of the goods delivered by the respondent. However, the cheques were returned by the bankers. The respondent could not receive any payment on these cheques, with the result they were required perforce to file a suit before the Second Additional City Civil Court at Hyderabad, being O.S. No.1461 of 1983. The suit was admittedly decreed ex parte on 5th September, 1985. In that, the applicant was directed to pay to the respondent a sum of Rs.16,599.76, together with interest accrued thereon at 18% per annum from the date of the suit till the date of realization and a sum of Rs.1,954/- towards the costs of the suit.

After obtaining decree, the respondent filed execution proceedings and as the applicant was residing at Surendranagar, the decree was transferred to the Court of Civil Judge (Senior Division), at Surendranagar, vide Execution Petition No.37 of 1987. The Court at Surendranagar issued attachment warrant and upon that event, it appears that the applicant presented an application for stay of further execution of the decree. In the meantime, the applicant moved the Court of the Second Additional City Civil Court at Hyderabad, firstly for setting aside ex parte decree made on 5th of September, 1985, and secondly, bringing to the notice of the Court that the decree is sought to be executed against the applicant, viz., Kiranben A. Shah, though the decree is against "A. Kiran Shah". The Court, which made the decree, however, returned the application to the applicant, by an order as follows :-

"... Returned. The petitioner is not party defendant to the suit. Hence, this petition is not maintainable. Time 10 days...."

It also appears that with a view to perhaps not delay the execution of the decree, the respondent also moved the transferee court at Surendranagar, for correction of the name of the applicant, i.e. judgment debtor. That Court, however, did not oblige the respondent in correcting the name and that way rejected the same. A little later, after hearing the parties by the impugned order dated 5th of February, 1990, the objections raised by the applicant were rejected, with the result decree was sought to be executed against the applicant. It is this order which lands the applicant before this Court in the present revision application.

Shri Champaneri, learned counsel appearing for the applicant, challenges the impugned order of 5th February, 1990 on the ground that the decree, which is in the name of "A. Kiran Shah", cannot be permitted to be executed against "Kiranben A. Shah", on the ground that Kiranben A. Shah, present applicant, was, in the first place, never a party in Original Suit No.1461 of 1983, before the Second Additional City Civil Court, Hyderabad, and secondly, in any event, the applicant never received the summons in the suit. According to the learned counsel, it is impossible to accept a situation that a decree, passed in the name of a wrong person, could be sought to be executed against some other person and, therefore, the entire proceedings are without jurisdiction and the order made by the learned Executing Court is without jurisdiction and the same is liable to be set aside. To buttress his submission, learned counsel then invites attention of this Court to Rule 26 of Order XXI and places reliance on Rule 28 thereof. In so far as Rule 26 of Order XXI is concerned, there can hardly be a grievance made on behalf of the applicant, as it appears that the applicant had enough time to move the original Court at Hyderabad in respect of the grievances she had against the making of the decree. In so far as the thrust of the learned counsel to Rule 28 is concerned, it may be noted that, that Rule says that any order made by the Court, by which the decree was passed, shall be binding upon the Court, to which the decree was sent for execution. It is, therefore, clear that the Court, to which a decree is sent for execution, can make no amendment or, in other words, cannot go behind the decree. Mr. Champaneri relies upon this provision of Rule 26, solely with a view to contend that when the applicant

preferred an application before the City Civil Court at Hyderabad, the Court had returned that application, clearly holding out that the applicant is not a party-defendant in the suit. This order, according to the learned counsel, is clearly binding on the Executing Court at Surendranagar and, therefore, there can be no execution against the applicant.

I have gone through the impugned order of the Executing Court and the material produced on record in the present compilation. It is common ground that Smt. Kiranben A. Shah had been conducting a proprietorship business, in the name and style of "M/s. Nigam Sales Corporation, College Road, Surendranagar". She also does not dispute about her taking dealership from M/s. Hyderabad Allwyn Metal Works Limited nor, for that matter, dispute that she had any transaction with the respondents. It appears that during the course of the dealership, when she had purchased goods from the respondent, she had given the two cheques in question, which subsequently bounced, by signing "Shah Kiran A.", with a rubber stamp of Nigam Sales Corporation Proprietor. It is indeed true that when the suit was instituted by the respondent, the title cause in the plaint showed "A. Kiran Shah". Once the applicant does not deny her dealership nor the transaction she had with the respondent, it is difficult to accept that when the suit was decreed against her, she can now be allowed to scuttle the decree because her name was erroneously mentioned in the title cause. Though the applicant attempts to show that she is "Kiranben A. Shah", the fact remains that when she issued the cheques, she clearly signed as "Shah Kiran A." and that too, as proprietor of M/s. Nigam Sales Corporation. Possibly, the respondent, which is from Hyderabad, might have believed that the last letter "A" is the surname and that is how, while describing the applicant in the plaint, they showed defendant as "A. Kiran Shah". There is otherwise no material on the record to suggest that the applicant was not aware of the suit and, on the contrary, there are reasons to believe that the applicant is somehow bent upon defeating the decree, made against her, only on technicalities. I am fortified in the view that I am taking because the applicant does not deny either her dealership with the respondent nor the transactions made nor the cheques issued by her. In this view of the matter, nothing succeeds in this Revision Application. The Executing Court at Surendranagar has, in my view, correctly approached the problem and had rightly rejected the objections raised by the applicant.

In this view of the matter, revision fails and it is dismissed. Rule is discharged. Interim order stands vacated. There shall, however, be no order as to costs.

It may be mentioned that a sum of Rs.10,000/- was directed to be deposited by the applicant, which she did. According to the learned counsel for the applicant, the respondent has already withdrawn the deposit amount of Rs.10,000/-. In any case, the Executing Court may now proceed with the execution by making appropriate orders.

(apj)